

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DMITRIY FABYANCHUK,

Petitioner,

v.

UNITED STATES ATTORNEY GENERAL,
et al.,

Respondent.

Case No. 2:18-cv-01814-RFB-NJK

ORDER

Petitioner has filed a habeas petition under 28 U.S.C. § 2241 without properly commencing the action by paying the filing fee or filing a complete pauper application. Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, a petitioner must attach both a properly executed financial certificate from his institution and an inmate account statement for the past six months or, if he has been incarcerated for less than six months, for the period of his incarceration. In addition, petitioner did not file his petition on the § 2241 petition form, as required. LSR 3-1.

It does not appear that a dismissal of this improperly commenced action without prejudice to the filing of a new and properly commenced action under a new docket number would constitute the functional equivalent of a dismissal with prejudice or otherwise cause substantial prejudice. This action will therefore be dismissed as improperly commenced.

IT IS THEREFORE ORDERED that this action is dismissed without prejudice. Petitioner shall file a new petition, and either pay the filing fee or file a complete pauper application, in a new action only and shall not file anything more in this closed case.

1 IT FURTHER IS ORDERED that a certificate of appealability is denied. Jurists of reason
2 would not find debatable whether the Court was correct in its dismissal of the action without
3 prejudice on procedural grounds, for the reasons discussed herein.

4 IT FURTHER IS ORDERED, pursuant to Rule 4 of the Rules Governing Section 2254
5 Cases, that the Clerk shall make informal electronic service upon respondents by adding state
6 attorney general Adam P. Laxalt as counsel for respondents and directing a notice of electronic
7 filing of this order to his office. No response is required from respondents other than to respond
8 to any orders of a reviewing court.

9 The Clerk of Court shall send petitioner: (a) a copy of his papers in this action; (b) two
10 copies of an inmate pauper application form and one copy of the instructions; and (c) two copies
11 of an AO-0242 form for a § 2241 petition, which can be retrieved from the forms page on the JNet.

12 The Clerk shall enter final judgment accordingly and close this case.

13 IT IS SO ORDERED.

14 DATED this 2nd day of October, 2018.



16 RICHARD F. BOULWARE, II
17 UNITED STATES DISTRICT JUDGE
18
19
20
21
22
23
24
25
26
27
28